




STATE OF DELAWARE

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MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Lisa B. Driggins, Public Utilities Analyst 

DATE: September 11, 2015

SUBJECT: IN THE MATTER OF THE APPLICATION OF TOWN OF FELTON FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICES PURSUANT TO 26 DEL. C. §203C ("PASKEY PROPERTY") (SUBMITTED JUNE 6, 2015; FILED AUGUST 25, 2015)
PSC DOCKET NO. 15-1029

On June 6, 2015, the Town of Felton ("Felton" or the "Town") submitted an application ("Application") with the Delaware Public Service Commission (the "Commission") seeking a Certificate of Public Convenience and Necessity ("CPCN") to provide water services to four parcels of land in Kent County, Delaware, known as the Paskey Property (the "Proposed Service Area") pursuant to 26 *Del. C.* §203C(e)(1). As noted below, the Application has been revised and now requests a CPCN for only one parcel in Kent County.

As required by 26 *Del. C.* §203C(e)(1) and the Commission's Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities, 26 *Del. Admin. C.* §2002 (the "Regulations"), the submitted Application contained the following documentation: (1) a copy of a petition signed by all of the landowners of record included in the Proposed Service Area requesting to be included in the Proposed Service Area;¹ (2) copies of the United States Postal Service forms verifying that the Town sent, via certified mail, a notice to all landowners of record of each parcel included in the Proposed Service Area; (3) a list of the County tax map parcel identification numbers of the properties and identification of all landowners of record included in the Proposed Service Area; and (4) a copy of the associated tax map clearly marking the Proposed Service Area. Additionally, the Application contained Felton's statement that its expansion of service to the Proposed Service Area will comply with the water pressure

¹ When the Town of Felton filed its Application on June 6, 2015, it included signed petitions. However, The Town later revised its Application to correct the citation for the CPCN to 26 *Del. C.* §203C(e)(1)b.4 based on a resolution or ordinance from the governing body of the county or municipality.

requirements of 26 *Del. C.* §§403(a) and (b) and that Felton is not barred by any of the restrictions set forth in 26 *Del. C.* §403(c).

After further review of the Application, Commission Staff ("Staff") found (1) the form of notice sent by the Town to the landowner was not approved by the Commission, (2) the Town did not publish the Application in two newspapers as required by the Regulations, and (3) the Town had included three parcels in the Application that were already in the Town's annexed service territory.

On July 1, 2015, Felton submitted a copy of the certified resolution and the proof of certified mailing as required by 26 *Del. C.* §203C(e)(1)b.4. Since the Town had already sent the form of notice to the landowner of record that had not yet been approved by the Commission, the Town requested Commission's approval of the form of notice as required by 26 *Del. Admin. C.* §2002-10.1. Staff believes Felton's form of notice provides adequate landowner notice, Staff recommends that the form of notice used by Felton in this application be approved for use by Felton and all other municipalities in future CPCN applications. In support of its request for approval of the form of notice, Felton provided a copy of Article III, Title V of its Ordinance "pertaining to the mandatory connection to the Town's water system and the Town limits of Felton," and explained to Staff that based on the provisions contained in that Ordinance. Felton does not allow any property located within its Town to opt out of its water service. (See attached Ordinance.)

Additionally, Felton requested a waiver of the newspaper publication notice requirement as set forth in 26 *Del. Admin. C.* §2002-10.7. Staff recommends that the Commission excuse this regulatory requirement, pursuant to Section 1.5 of the Regulations,² as the Proposed Service Area has been annexed into the Town and Article III, Title V states properties that have been annexed into the Town are required to receive water from the Town (See attached Ordinance).

Staff's review also found that the Proposed Service Territory encompassed three parcels which were included in a CPCN application granted by DNREC on March 12, 1993 in Docket No. 91-CPCN-16. On August 5, 2015, the Town removed these three parcels of land from the Proposed Service Territory.³ Thus the Proposed Service Territory now encompasses one parcel of land.

On August 25, 2015, at Staff's request and as additional support for its request for a waiver of the newspaper notification requirement, Felton supplied the Commission with proof that notice of the annexation of the property encompassed by the Proposed Service Territory was mailed to the landowners. Staff supports this waiver for the reasons stated above and because Staff believes that the annexation notice mailed by the Town satisfies the publication requirement set forth in Section 10.7 of the Regulations. With the addition of the above noted

² Section 1.5 of the Regulations provides as follows: "The Commission may by Order, and for good cause, waive any obligation under these regulations that is not required by statute and may, in an individual application, excuse any failure to comply with these regulations that is not material to the Commission's decision."

³ These parcels were Kent County Tax Map Parcel Numbers 8-07-128.20-01-12.04, 8-07-128.20-01-12.05, 8-07-128.20-01-12.06.

requests, Staff found the Application to be administratively complete and deemed the Application filed (the “Filed Application”).

Staff has completed its review of the Filed Application and finds that it is in compliance with the provisions of 26 *Del. C.* §203C and the Regulations except for (i) the publication in two newspapers of a public notice of Felton’s Filed Application as required by Section 2002-10.7 of the Regulations, which Staff recommends be excused and (ii) seeking Commission approval of the notice it sent to the landowner without prior Commission approval. No other errors or omissions were found. Finally, to determine whether the Commission should deny the requested CPCN as allowable under 26 *Del. C.* §203C(f), Staff solicited comments from the Delaware Department of Natural Resources, the Office of the State Fire Marshal, and the Office of Drinking Water of the Division of Public Health. All three agencies responded by indicating that they have no issues relating to Felton’s ability to provide safe, adequate, and reliable water services to its existing customers.

In summary, Staff recommends that the Commission excuse the regulatory requirement that a notice of the Filed Application be published in two newspapers, approve the form of notice that was sent to the landowners for both Felton and for all other municipalities for all future water CPCN applications and grant the CPCN requested in PSC Docket No. 15-1029 as submitted on June 5, 2015 and filed August 25, 2015.